

Exhibit 166

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**Section 39: City Auditor and Comptroller**

The City Auditor and Comptroller shall be elected by the Council for an indefinite term and shall serve until his successor is elected and qualified. The City Auditor and Comptroller shall be the chief fiscal officer of the City. He shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by him and approved by the City Manager and the Council. He shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Auditor and Comptroller shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof. He shall perform the duties imposed upon City Auditors and Comptrollers by the laws of the State of California, and such other duties as may be imposed upon him by ordinances of the Council, but nothing shall prevent the Council from transferring to other officers matters in charge of the City Auditor and Comptroller which do not relate directly to the finances of the City. He shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. He shall appoint his subordinates subject to the Civil Service provisions of this Charter.

*(Amendment voted 06-04-1974; effective 08-13-1974.)*

*(Section 39 is modified by contrary language in Charter sections 265(b)(10) and 265(b)(11) during the operative period of Charter Article XV.)*

**Section 40: City Attorney**

At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A City Attorney shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel

independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City

Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year.

In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

*(Amendment voted 04-20-1943; effective 05-04-1943.)*

*(Amendment voted 04-15-1947; effective 05-01-1947.)*

*(Amendment voted 11-04-1958; effective 02-19-1959.)*

*(Amendment voted 11-06-1962; effective 01-21-1963.)*

*(Amendment voted 11-04-1975; effective 12-01-1975.)*

*(Amendment voted 06-02-1992; effective 07-13-1992.)*

*(Amendment vote 11-02-2004; effective 04-01-2004)*

#### **Section 40.1: Concurrent Jurisdiction of City Attorney with District Attorney.**

The City Attorney shall have concurrent jurisdiction with the District Attorney of the County of San Diego to prosecute persons charged with or guilty of the violation of the state laws occurring within the city limits of The City of San Diego for offenses constituting misdemeanors.

*(Addition voted 03-10-1953; effective 04-20-1953.)*

#### **Section 41: Commissions**

The Mayor shall appoint, subject to the confirmation of the Council, members of all commissions established pursuant to this section. Whenever the Mayor does not appoint a member within forty-five (45) days after a vacancy occurs, the Council shall make such appointment. The commissioners shall be limited to two (2) full consecutive terms, with one (1) term intervening before they become eligible for reappointment; and this provision shall apply to anyone who has served two (2) full consecutive terms by January 1972. The terms of commissioners may extend beyond the elective term of the appointing Mayor. The Mayor shall fill, subject to the confirmation of the Council, any

Exhibit 167

**CITY COUNCIL OF THE CITY OF SAN DIEGO  
CLOSED SESSION DOCKET  
FOR  
MONDAY, OCTOBER 8 , 2007  
CITY ADMINISTRATION BUILDING  
COMMITTEE ROOM – 12<sup>TH</sup> FLOOR  
202 "C" STREET  
SAN DIEGO, CA 92101**

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**NOTE:** In accordance with the San Diego City Council Permanent Rule for Noticing and Conduct of Closed Session Meetings, adopted on February 28, 2005, a portion of the regular open meeting agenda of the City Council has been reserved for City Attorney comment, public comment, and City Council discussion of the content of this Closed Session Docket. **Public testimony for this Closed Session Agenda will be taken today during the 2:00 p.m. Council meeting.**

**Conference with Legal Counsel - anticipated litigation - initiation of litigation pursuant to California Government Code Section 54956.9(a):**

**CS-1 *City of San Diego v. San Diego City Employees' Retirement System (SDCERS)***

DCA Assigned:

The Mayor requests that the City Council consider the initiation of litigation, to include a Declaratory Relief Action and other actions as necessary, to determine the effective date of the benefit changes contained in the Memorandums of Understanding dated July 1, 2005 between the City and its recognized bargaining units. The above sought actions arise from a letter dated August 3, 2007 wherein SDCERS notified the City that it did not recognize July 1, 2005 as the effective date for the benefit changes. Rather, SDCERS notified the City that it deemed February 16, 2007 the effective date due to their assertion that the MOU is not the "Plan document" and, therefore, the Plan was not amended until January 17, 2007 when the City Council passed Ordinance 0-19567. The Mayor will request the retention of outside legal counsel to assist in these actions and discuss related Issues.

**Conference with Legal Counsel - anticipated litigation - initiation of litigation - pursuant to California Government Code Section 54956.9(b):**

**CS-2    *Mt. Soledad Geological Movement***

The Mayor requests that the City Council consider the retention of outside counsel and other actions as necessary, in anticipation of litigation regarding the recent geological movement on Mt. Soledad.

**Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(a):**

**CS-3    *Yevdokia (Daisy) Bristman, et al. v. Western Trucking, LLC, et al.*  
San Diego Superior Court Case No. GIC 855357**

DCA: B. Hsu

Plaintiff claims personal injuries as a result of being run over by a tractor-trailer making a U-turn to enter a construction site which occurred on July 15, 2005. The City Attorney will discuss possible settlement in the case in Closed Session.

**CS-4    *In the Matter of: Natural Gas Anti-Trust Cases I, II, III, & IV*  
RE All Price Indexing Cases, JCCP Nos. 4211, 4224, 4226, and 4228**

DCA Assigned: F. Ortlieb

This matter involves a pending consolidated action suit against retail sellers of natural gas for anti-competitive acts and unfair business practices in 2000 and 2001. In Closed Session, the City Attorney will discuss recommended settlements proposed for two defendants, Enserco Energy, Inc., and Aquila Merchant Services, Inc.

**CS-5** *De Anza Cove Homeowners Association, Inc. v. City of San Diego, et al.*  
**San Diego Superior Court Case No. GIC 821191**  
*Ernest Abbitt, et al. v. City of San Diego, et al.*  
**San Diego Superior Court Case No. GIC 865536**

DCA Assigned: M. Severson

The *De Anza Cove Homeowners Association, Inc. v. City of San Diego, et al.* matter is an action filed by the De Anza Cove Homeowners Association for damages and declaratory relief. The *Ernest Abbitt, et al. v. City of San Diego, et al.* matter is an action filed by individual residents at De Anza Cove for damages. The Court has coordinated these two cases. In Closed Session the City Attorney will brief the Council on the status of these related matters, and discuss possible settlement with the City Council.

**CS-6** *La Jolla Country Club v. City of San Diego*  
**San Diego Superior Court Case No. GIC 872163**

DCA Assigned: C. Brock

La Jolla Country Club [LJCC] initiated its lawsuit against the City in 2006 alleging causes of action for (1) dangerous condition of public property, (2) private nuisance, (3) inverse condemnation, and 4) breach of contract. LJCC claims drainage facilities across LJCC's property failed causing damage to LJCC fairways. LJCC seeks reimbursement of fairway repair costs and other associated damages. In Closed Session, the City Attorney will present LJCC's settlement proposal to the City Council.

**CS-7** *Helsey v. City of San Diego*  
**San Diego Superior Court Case No. GIC 865903**  
**(Consolidated with *Foote v. City of San Diego***  
**San Diego Superior Court Case No. GIC 865903)**

DCA Assigned: C. Brock

Plaintiff filed her Complaint for Nuisance, Trespass, Preliminary and Permanent Injunction, and Inverse Condemnation [Complaint] against the City in May 2006. Plaintiff's Complaint alleges water intrusion entering defects in the City street and gutter in front of her home has resulted in permanent damage to the hillside and patio structures on her property. In Closed Session, the City Attorney will present Plaintiff's settlement proposal to the City Council.



**CS-8 *Foote v. City of San Diego***  
**San Diego Superior Court Case No. GIC 865903**

DCA Assigned: C. Brock

Plaintiffs filed their Complaint for Nuisance, Trespass, Preliminary and Permanent Injunction, and Inverse Condemnation [Complaint] against the City in May 2006. Plaintiffs' Complaint alleges water intrusion entering defects in the City street and gutter in front of their home has resulted in permanent damage to the hillside and patio structures on their property. In Closed Session, the City Attorney will present Plaintiffs' settlement proposal to the City Council.

**CS-9 *T-Mobile v. City of San Diego***  
**San Diego Superior Court Case No. 07-CV-815-WGH**

DCA Assigned: J. Serrano

Lawsuit by wireless service provider, who leases City owned land for its facilities, contending the City's leasing policies are improper under Federal and State law. In Closed Session, the City Attorney will brief the City Council on the status of matter.

**Conference with Legal Counsel - anticipated litigation - initiation of litigation,  
pursuant to California Government Code section 54956.9(c):**

**CS-10 *City of San Diego v. Manchester Pacific Gateway, LLC***

DCA Assigned: M. Dickenson

The City Attorney requests the City Council consider initiation of litigation to enforce Manchester Pacific Gateway, LLC's, agreement to indemnify the City of San Diego.

Exhibit 168

Editions of the North County Times Serving San Diego and Riverside Counties

Friday, November 30, 2007

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**Friday, November 30, 2007**

Last modified Wednesday, October 10, 2007 11:00 PM PDT

Aguirre to represent San Diego in landslide litigation

By: North County Times wire services -

SAN DIEGO -- City Attorney Michael Aguirre said today he will represent San Diego in litigation stemming from the landslide in La Jolla, despite the City Council's decision to retain outside legal counsel.

Aguirre sent a letter to the City Council informing the panel that he is protected by the city charter as the legal adviser in matters dealing with Wednesday's catastrophic collapse.

"They have no authority to decide that the city is represented by somebody else," Aguirre told reporters.

At Mayor Jerry Sanders' request, the City Council voted 6-2 behind closed doors last night to hire an outside attorney to represent San Diego in cases brought against the city related to the landslide.

Councilwoman Donna Frye and Tony Young cast the dissenting votes.

Exhibit 169

## **Partial Transcript of Mayor Jerry Sanders 10 October 2007 Press Conference**

Today my office will release a portion of the public documents related to events preceding the Mount Soledad Landslide on Wednesday, October 3<sup>rd</sup>. In the name of transparency and equal access to public documents, I thought it was important to get these documents out just as soon as possible...The documents being released cover July 18<sup>th</sup>, 2007, through the present. While not complete, the documents provide a snapshot of how the City responded to the concerns of homeowners about soil movement and utility separations in the area. Additional documents within and outside of the timeframe I just noted will be released in the coming weeks...

The documents will form part of the investigation that we've launched into the possible causes for the landslide. As you know, we have a forensics geotechnical team on site to evaluate that. The investigation will also detail the City's reaction to the events that preceded the slide. I have and will remain committed to maintaining an open mind. And I would also ask the public not to reach premature judgments or conclusions about the causes of landslide...

Well, I believe that the City of San Diego - the Mayor and the City Council - need an outside attorney to advise us on these issues because I believe the City Attorney made comments from minute one, day one, and continues to make those comments in the public that I don't think serve and protecting the taxpayer's best interest and the City's best interest.

I think we need an objective third party that can come in and help us prepare a case for whatever eventuality comes forward. I think that what we are looking forward to is an objective investigation that will determine what the causes of those were. It appears to me that the City Attorney has already decided what his course of action is, one that he has not consulted with the [City] Council on, that he has not consulted with me on. We absolutely need to have legal advice on this and we are not receiving it.

I think there is a couple of issues that we need somebody that is not so immersed in the event. We have to rely on somebody to give us legal advice. We are not getting that on some issues. And it makes it very difficult when the City Attorney has taken a position by himself and then we are supposed to figure out what the legal advice is on that, when the City Attorney has already determined the course of action, not asking us what we think about it. So, we need objective advice. We need good, sound legal advice on some issues.

Exhibit 170



More Metro news

## **City attorney replaced on landslide legal issues**

### **Sanders hires private lawyer**

**By Jennifer Vigil**  
UNION-TRIBUNE STAFF WRITER

**October 17, 2007**

SAN DIEGO – Mayor Jerry Sanders hired a private attorney yesterday to replace City Attorney Michael Aguirre on legal issues related to the La Jolla landslide.

The attorney, Douglas Butz of the firm Butz Dunn & DeSantis, specializes in business and professional liability cases.

A priority for Butz, according to a mayoral spokesman, will be to inform affected homeowners, their lawyers and city insurers that they are to communicate only with Butz and not with Aguirre.

Aguirre said last week that he will continue to work on the La Jolla case, despite the City Council's Oct. 9 vote to approve Sanders' proposal to hire outside counsel.

Sanders, along with Council President Scott Peters, announced the attorney's appointment in a memo to council members. The mayor also said the city could hire another lawyer who specializes in insurance matters.

Aguirre did not return calls seeking comment.

Butz and his team will be paid \$265 to \$385 an hour. He is the latest in a string of private attorneys the city has retained to deal with complex legal issues.

They include the federal investigations into City Hall finances, the successful appeal of a \$95 million judgment against San Diego and cases in which Aguirre has been accused of having conflicts of interest.

On the same day council members agreed to hire private attorneys in the La Jolla case, they also approved Sanders' proposal to retain new legal counsel in a dispute with the city pension system. The city filed that case, to determine the proper cut-off date for a set of benefits, on Monday.

The landslide occurred Oct. 3, displacing 19 homeowners. Both sides have been arguing over possible causes, with residents complaining that the city failed to repair water leaks that could have contributed to the slide. City officials said they did everything they could.

One lawsuit and 15 claims, or preludes to suits, have been filed. Tests continue at the site to determine the cause and the best methods for repair.

Critics of Aguirre's handling of the Soledad Mountain Road slide fear he could have left the city vulnerable to liability because of statements he made regarding water-line breaks.

Aguirre has defended his actions and said he was gathering information to protect the city's position. He also has said he is determined to work with the counsel hired by Sanders.

In a memo less than 24 hours after the council's decision to hire private attorneys, Aguirre asserted his right "to represent the city of San Diego in connection with the Soledad Mountain Road landslide."

The council and Aguirre have haggled over his role since he took office late in 2004. The city attempted to settle the question two years ago, when council members held a four-hour workshop to explore just who the city attorney's client is: the city and its elected representatives or the people, as Aguirre maintains.

The question could end up being settled in court, should Aguirre offer further challenges to the decision that led to Butz being hired.

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■ Jennifer Vigil: (619) 718-5069; [jennifer.vigil@uniontrib.com](mailto:jennifer.vigil@uniontrib.com)

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